

06-C 74-1652

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

8 October 1974

Honorable Karl E. Bakke
General Counsel
Department of Commerce
Washington, D.C. 20230

Re: United States v International Business Machines Corporation,
69 Civ. 200 (S.D.N.Y.)

Dear Mr. Bakke:

This is to express my deep concern that certain classified Agency materials in the custody of the Department of Commerce have been disseminated to representatives of the International Business Machines Corporation (IBM) without the Department having attained prior Agency consent. In this connection, I have reference to the following documents:

1. Report on Production of Peripheral Equipment in the U.S.S.R. and Eastern Europe, transmitted to Arthur H. Hausman, Chairman, Computer Peripherals, Components and Related Equipment Technical Advisory Committee by memo from [redacted] dated October 19, 1973.
(classified CONFIDENTIAL)
2. Report on Production of Computers in the U.S.S.R., transmitted to John Collins, Chairman of Computer Systems Technical Advisory Committee from [redacted] by memo dated October 29, 1973.
(classified CONFIDENTIAL)
3. Soviet RYAD Computer Program, dated August 1973. (classified SECRET)
4. Soviet Computer Software, dated July 1973.
(classified SECRET)

STATINTL

It is my understanding that copies of these documents were released to IBM despite a previous request by a member of my staff that this not be done without Agency approval.

As you know, The Third Agency Rule specifically provides that classified material originating in one department shall not be disseminated by a department to which it has been made available without the consent of the originating department. This Rule of long standing is now contained in 3A CFR 1972 Comp. at page 237. Given this situation, it would appear that the Department of Commerce's release of these four documents could not be characterized as being other than a violation of The Third Agency Rule. Of course, in terms of the Rule, notice of intent to release a classified document does not satisfy the consent requirement.

Further, the National Security Act of 1947, as amended, specifically vests in the Director of Central Intelligence the statutory responsibility for protecting intelligence sources and methods from unauthorized disclosure. (See 50 U.S.C.A. 403(d)(3)). Given the fact that documents originating in this Agency frequently contain information relating to intelligence sources and methods, the Department's action could be understood as being an infringement of the statutory responsibility which the Congress has seen fit to bestow upon the Director of Central Intelligence.

It is for the above reasons that I find it necessary to bring this most unfortunate situation to your personal attention. While I recognize that in releasing these documents the Department was seeking to comply with a court order, the fact remains that the release was effected in a manner contrary to regulations of the Executive Branch. Should future IBM discovery activities require the release of additional Agency classified material, it would be appreciated if you would ensure no such material is released except in compliance with The Third Agency Rule.

STATINTL

Sincerely,

John S. Warner
General Counsel

COORDINATION:

ILLEGIB

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17 SEP 1974

Date

Edward W. Proctor
Deputy Director
for
Intelligence

1 OCT 1974

Date

Carl E. Duckett
Deputy Director
for
Science & Technology

ILLEGIB

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17 SEP 1974

Date

John F. Blake
Deputy Director
for
Administration

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(17 September 1974)

STATINTL

COORDINATION:

Edward W. Proctor
Deputy Director
for
Intelligence

19 Sept 74
Date

STATINTL

1 Oct 74
Date

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Carl E. Duckett
Deputy Director
for
Science & Technology

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Date



John F. Blake
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Administration